



INTERIOR BOARD OF INDIAN APPEALS

Magnum Energy, Inc. v. Eastern Oklahoma Regional Director, Bureau of Indian Affairs

38 IBIA 141 (10/18/2002)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ARLINGTON, VA 22203

MAGNUM ENERGY, INC.,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 01-159-A
EASTERN OKLAHOMA REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee	:	October 18, 2002

Appellant Magnum Energy, Inc., seeks review of a May 31, 2001, decision issued by the Acting Eastern Oklahoma Regional Director, Bureau of Indian Affairs (Regional Director; BIA), finding that Oil and Gas Lease No. 503-8307 (lease), Allie May Billy, now Jones, Choctaw M-18, had expired by its own terms for failure to produce oil and/or gas in paying quantities. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

The lease was entered into on August 27, 1990, between Appellant and Allie May Billy, now Jones. It covered 1/2 of the mineral interest in the E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NE $\frac{1}{4}$ of section 29, T. 4 N., R. 5 W., Grady County, Oklahoma, containing 60 acres more or less. The lease had an initial term of 5 years, "and as much longer thereafter as oil and/or gas is produced in paying quantities." The lease was approved by the Muskogee Area Director, now Eastern Oklahoma Regional Director, on September 5, 1991.

By letter dated December 28, 1998, the Tulsa Field Office of the Bureau of Land Management, notified BIA that the last reported production from the lease was in June 1997. On May 31, 2001, the Regional Director issued the decision presently under review. He notified Appellant that the lease had expired effective June 30, 1997, for failure to produce oil and/or gas in paying quantities.

Appellant appealed to the Board. Both Appellant and the Regional Director filed briefs on appeal.

Appellant admits that the only producing well on this lease was shut in around June 1997 "because of low gas prices and difficulties in obtaining a market for the gas." Appellant's

Opening Brief at 3. Appellant continues: “Although the * * * well was capable of producing gas in paying quantities, the operator shut-in the well because it believed such action would prevent economic waste and the waste of valuable resources in the face of low gas prices and marketing difficulties.” Id. Appellant contends that during the majority of the time the well was shut in, Oklahoma State law, specifically 17 Okla. Stat., Supp. 1998, § 53, provided for a moratorium on plugging of marginally producing wells because of the low prevailing market prices for oil and gas during that time. ^{1/} Finally, Appellant argues that sales of oil and gas from the well were resumed in November 2000, when market prices increased.

Appellant characterizes BIA’s action as a cancellation of the lease and argues that Paragraph 6 of the lease and 25 C.F.R. Parts 211, 212, and/or 213 require that the Regional Director give it an opportunity to respond to a lease cancellation. The Board has held on a number of occasions that when an oil and gas lease has a term like that in Appellant’s lease--i.e., a primary term and “as much longer thereafter as oil and/or gas is produced in paying quantities”--the lease, if in its extended term, expires when production ceases. Expiration occurs by operation of law and not because of any action taken by BIA. See, e.g., Dyck v. Acting Eastern Oklahoma Regional Director, 35 IBIA 250, 251 (2000); Oxley Petroleum Corp. v. Acting Muskogee Area Director, 29 IBIA 169, 170 (1996); Benson-Montin-Greer Drilling Corp. v. Acting Albuquerque Area Director, 21 IBIA 88, 94-5, 98 I.D. 419, 423 (1991), aff’d, Benson-Montin-Greer Drilling Corp. v. Lujan, No. CIV-92-210 SC-LFG (D.N.M. 1993), and cases cited there. Because the lease was not cancelled, the cancellation procedures set out in the lease and the regulations are inapplicable.

Appellant contends that the Regional Director violated its right to due process by failing to give it advance notice of the proposed action and by failing to afford it an opportunity for a pre-action hearing. As just explained, the lease expired by its own terms when production ceased. Those terms were clearly stated in the lease. The Regional Director was not required to give either advance notice that the terms of the lease would be enforced, or to provide a hearing before he could enforce those terms.

Appellant asserts that the shut-in was during a time of low prices and for the reason of preventing economic waste. The Board has held that some shut-ins may be justified. See, e.g., Citation Oilfield Supply & Leasing, Ltd. v. Acting Billings Area Director, 23 IBIA 163, 170

^{1/} Although noting the existence of the Oklahoma statute, Appellant does not base any specific argument on it. Nor does Appellant attempt to argue that the statute was applicable to leases of Indian land.

Appellant fails to show that this Oklahoma statute was applicable to either the decision or the lease at issue here.

(1993) and 27 IBIA 210 (1995) (temporary shut-in caused by a mechanical breakdown or accident); Duncan Oil, Inc. v. Acting Navajo Area Director, 20 IBIA 131 (1991) (temporary shut-in based on reasonable belief that shut-in was necessary to prevent damage to trust property). However, it has never found a shut-in justified solely for economic reasons. See Oxley Petroleum, *supra*. Appellant does not present reasons sufficient to cause the Board to make such a holding here.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Regional Director's May 31, 2001, decision is affirmed.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Anita Vogt
Administrative Judge